

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**THOMAS R. WINSTON,
APPELLANT
vs.**

**DAVID WINSTON and MICHELLE WINSTON,
RESPONDENTS**

DOCKET NUMBER WD76620

DATE: SEPTEMBER 2, 2014

Appeal from:

The Circuit Court of Jackson County, Missouri
The Honorable Kathleen A. Forsyth, Judge

Appellate Judges:

Division Two: Victor C. Howard, Presiding Judge, Alok Ahuja, Judge and Mark D. Pfeiffer,
Judge

Attorneys:

Adam S. Davis, for Appellant

Anne L. Pond, for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

THOMAS R. WINSTON, APPELLANT

v.

DAVID WINSTON and MICHELLE WINSTON

WD76620

Jackson County, Missouri

Before Division Two: Victor C. Howard, Presiding Judge, Alok Ahuja, Judge and Mark D. Pfeiffer, Judge

Dr. Bernard Winston created a number of trusts which became the subject of litigation following his death. In part of the litigation between Dr. Bernard Winston's son Dr. Thomas Winston and Dr. Thomas Winston's children, trial court's judgment that ordered, among other things, that distributions be made to his children from certain of the trusts, that certain trusts be amended to remove Dr. Thomas Winston's power to consent to all distributions to his children, and that Dr. Thomas Winston pay \$109,117.95 of his children's attorney fees. Dr. Thomas Winston appeals.

AFFIRMED IN PART, REVERSED IN PART, REMANDED.

Division Two Holds:

Dr. Thomas Winston's children did not violate the no-contest clause of the trusts. Dr. Thomas Winston's veto/consent power over potential distributions to the twins is separate from any fiduciary role he has in connection with the trusts and is not limited by fiduciary considerations. The estrangement and hostility between Dr. Thomas Winston and the twins did not constitute changed circumstances such that the trusts must be reformed to effectuate Dr. Bernard Winston's intent. The trial court's conclusion that Dr. Thomas Winston breached a fiduciary duty as to the 1990 Trust, the trial court's order to remove Dr. Thomas Winston's veto/consent power over potential distributions to the twins, and the trial court's order that distributions for automobile and educational expenses be made to the twins from the 1990 Trust are reversed. At least part of the trial court's reasoning for its award of attorney's fees to the twins is reversed, and therefore the issue of attorney's fees, costs, and expenses of the case is reversed and remanded for determination in accordance with section 456.10-1004 and the conclusions of this opinion.

Opinion by: Victor C. Howard, Judge

Date: September 2, 2014

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